
Appeal Decision

Site visit made on 25 February 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/P1425/W/24/3351850

Site North of Slugwash Gardens, Slugwash Lane, Wivelsfield Green RH17 7QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Remmus Designer Homes Limited against Lewes District Council.
 - The application Ref is LW/23/0532.
 - The development proposed is described as 'erection of 6no. residential dwellings with associated landscaping and parking and the retention of existing access'.
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Decision

1. The appeal is dismissed and planning permission for erection of 6no. residential dwellings with associated landscaping and parking and the retention of existing access is refused.

Application for costs

2. An application for costs was made by the appellant against Lewes District Council. This application is the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published in December 2024 and is applicable to this appeal. Both parties have had the opportunity to comment on changes relevant to their cases and I have taken comments received into account.
4. A new Local Plan is being prepared, but it remains at an early stage in the plan-making process according to the evidence provided. Although elements of the evidence base and consultation process have been brought to my attention, neither party relies on any emerging draft policies and, in any event, at this stage any emerging policies would carry limited weight.
5. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
6. As submitted to the Council, the proposed development included a new footway along one side of Slugwash Lane, to connect the site with the pavement at the junction with Green Road. A detailed drawing of the proposed footway was included in the Redwood Partnership Transport Statement dated July 2023, with a revised version also being included in the Highways Technical Note dated October

2023¹. In the schedule of appeal documents, there is no indication that this drawing was withdrawn or superseded by any further revisions to the transport evidence.

7. In response to the Council's statement of case, the appellant highlighted that an amended location plan was submitted to the Council in January 2024, which excluded the land required for the footway from the application site. However, although there is evidence in correspondence between the parties that the Council accepted submission of that amended plan, the same correspondence indicates an expectation that the footway would still be delivered as off-site highway works, by means of an agreement under s278 of the Highways Act 1980. Furthermore, the footway was presented as part of the proposed development in the appellant's statement of case for this appeal, notably in sections 8.6 and 8.7.
8. The Highways Authority's response raising no objection to the application, following submission of the Highways Technical Note, was subject to imposition of a Grampian condition to secure implementation of off-site works to deliver the footway. An Officer Report published in January 2024, prior to a decision being deferred, also identified the footway as being a necessary element of the development. The recommendation in that report was subject to completion of a suitable legal agreement, but a Grampian condition would be an alternative approach. While the appellant suggests that the Council's view on the necessity of the footway may have changed, that is not the position expressed in the Council's Statement of Case. Inclusion of the proposed footway was also the basis on which interested parties were invited to comment on the application and this appeal.
9. Having taken account of points made by both parties, I have considered the appeal on the basis that a footway along Slugwash Lane is proposed. Although it would be outside the appeal site, it is detailed on other application drawings and could be secured by means of a Grampian condition requiring completion of off-site works. Based on the evidence before me, such a condition would meet the tests in paragraph 57 of the Framework, on the basis that it would be necessary to provide suitable pedestrian connectivity. Although ownership of part of the required land is disputed by an interested party, the Council and Highways Authority both indicate that a footway could be delivered on land within the public highway. That being the case, use of a Grampian condition would not conflict with the advice in Planning Practice Guidance, including the advice that such conditions should not be used where there are 'no prospects at all' of the required works being secured within the lifetime of the planning permission.

Main Issues

10. The Council's statement of case states that, had they reached a decision, planning permission would have been refused for two reasons, relating to the effect on the setting of Baldings, a Grade II listed building, and the effect on landscape character. Against that background, the main issues are:
 - the effect of the proposed development on the character and appearance of the area,
 - whether it would preserve or enhance the setting of Baldings, a Grade II listed building, and

¹ Drawings REDW-3487-100 and REDW-3487-100 Rev A

- whether any harm would be outweighed by other material considerations, having regard to the benefits of the proposed development and the supply of housing land.

Reasons

Development Plan

11. The appeal site lies outside the planning boundary of Wivelsfield Green, which is a short distance to the south. However, it adjoins existing low-density housing at the southern end of Slugwash Lane, which is also outside the planning boundary. New housing outside planning boundaries is restricted by Policy DM1 of the Lewes District Local Plan Part 2 (LLP2) 2020, and also by Policy 1 of the Wivelsfield Neighbourhood Plan 2016. The Parish Council furthermore highlights that further development along Slugwash Lane was actively excluded when the Neighbourhood Plan was under preparation. However, the Council acknowledges that the currently applicable annual housing requirement is considerably higher than the housing requirement in the Local Plan, on which the planning boundaries were based. As such, the Council recognises that planning boundaries may need to be breached in order to help meet local housing needs.
12. The Council's Interim Policy Statement for Housing Delivery, March 2020 (IPS), sets out several criteria to guide the provision of housing outside planning boundaries, if there is a shortfall in housing land supply. The IPS is not part of the development plan, so it does not carry similar weight. Nevertheless, it provides guidance on the circumstances in which development outside a planning boundary may be acceptable, to boost the supply of housing land.
13. Although the appeal site is not contiguous with the planning boundary, as required in the IPS, it does adjoin the intervening housing along Slugwash Lane. The proposed dwellings would not be isolated, having regard to their relationship with the existing settlement. Future occupiers would be able to make use of local services and facilities, with the proposed footway contributing to pedestrian connectivity, albeit it may be of below standard width given the available highway land. On that basis, the Council has not alleged that the location is unsuitable, in principle, for housing. While I have had regard to points raised in representations on the principle of further development outside the planning boundary, and along Slugwash Lane specifically, based on the evidence before me I have no reason to reach a different view.
14. Nevertheless, Policy DM1 also requires that, outside planning boundaries, the distinctive character and quality of the countryside will be protected. The IPS takes a more balanced approach, but does require that, as well as making efficient use of land, development outside planning boundaries should respond sympathetically to the existing character and distinctiveness of the adjoining settlement and rural area.

Character and Appearance

15. The site comprises two parcels of land enclosed by lines of mature trees and some hedgerows. There is a ditch and a line of trees through the middle of the site, with indications of an informal track linking the two parcels. Otherwise, the land is open, with low-lying vegetation and it has a very clearly undeveloped character. Although the description of the proposal refers to retention of an existing access, currently

the roadside ditch and vegetation along Slugwash Lane is continuous and there is no visible vehicular access.

16. Slugwash Lane is a relatively narrow road with no pavements and soft, vegetated highway verges. At the southern end of the lane, between Green Road and the appeal site, there are some detached dwellings in mature garden plots. Those which are visible from the lane are mostly bungalows or chalet bungalows, well spaced out and with low, compact roof forms. The two-storey listed building at Baldings is also of modest proportions, although it is taller than its neighbours, and it is a more typically rural dwelling with some exposed timber frame and traditional clay tile hanging to the upper floor.
17. Slugwash Lane has a distinctly more rural character than Green Road, which is a wider, busier road with pavements and a more coherent built up frontage of two storey dwellings. Near the junction with Green Road, the lane feels enclosed by the garden plots and roadside vegetation. However, beyond the existing housing and the appeal site, the landscape becomes much more open, with a series of open fields behind hedgerows and only occasional, very sporadic housing.
18. The southern part of the lane serves as a transitional area between the more built-up part of the settlement at Green Road and this rural landscape setting. The modest proportions and spaced-out layout of the existing dwellings contributes to that sense of transition. Although the appeal site is more enclosed by vegetation than the adjacent fields, it has a very clearly undeveloped character, so has more in common with the rural landscape than with the built-up area.
19. The proposed design incorporates single storey elements, and much of the first-floor accommodation would be within the roofspace. However, there would also be two-storey elements with steeply pitched roofs. The scale of the roofs would be relatively substantial, so as to accommodate the first-floor accommodation and, notwithstanding the generally sub two storey design, the massing of the dwellings would be significantly greater than is typical of the existing dwellings along the lane. The close grouping of the three detached dwellings at the rear would tend to emphasise their combined scale. Although the courtyard layout could be said to draw on the characteristics of farmyards or similar groups of rural buildings, that is not part of the existing pattern of development diminishing in scale along the southern section of Slugwash Lane.
20. A significant landscape framework would be provided, including retention of the mature trees and additional scrub planting. There would be a buffer of open space along part of the northern boundary, where there are gaps between the trees, to filter views of the dwellings at the front of the site. However, the vegetation along Slugwash Lane would be severed to accommodate the vehicular access, which would open up views exposing the scale and extent of the development. Even though the soft landscaping would filter views of the dwellings, their scale and the developed character of the site would also be readily apparent when approaching the site from the open countryside to the north.
21. There is no universal policy requirement for a gradual transition at the edge of a settlement, and there are many two storey dwellings elsewhere in Wivelsfield Green. Nevertheless, the diminishing scale of the dwellings along Slugwash Lane is a distinctive and positive aspect of its character. That would be undermined by the introduction of larger and more formally laid out dwellings at the interface with

the surrounding countryside. While the overall density would be low, there would be a more abrupt transition between the housing on the edge of the settlement and its rural context. Comparison with the plot coverage of dwellings such as Warrenton, further along the lane is of limited relevance, since these are not part of the same transitional area at the edge of the settlement.

22. Furthermore, formation of a footway would formalise the character of Slugwash Lane, with the plans in the transport evidence indicating an engineered surface with kerbline, in place of the existing soft verges, and some infilling of existing ditches. There would not be such a clear distinction between the more urbanised streetscape along Green Road and the narrower, more highly vegetated character of Slugwash Lane. That would further erode the rural character of the lane and its transitional function.
23. For the above reasons, I conclude that the proposal would be harmful to the character and appearance of the area. The level of harm would be mitigated by the proposed low density and landscape framework. Nevertheless, the character of Slugwash Lane would be eroded to a harmful degree. That would be contrary to relevant requirements in Policy CP10 of the Lewes District Local Plan Part 1 (LLP1) adopted 2016 and Policy 5 in the Neighbourhood Plan. These policies, amongst other things, require that locally distinctive landscape qualities and characteristics are maintained and that the scale and layout of new development reflects and enhances the character and scale of surrounding buildings and distinctive local landscape features.

Heritage

24. Although a number of heritage assets are mentioned in the evidence, the Council's Statement of Case refers specifically to the effect on the setting of Baldings, a Grade II listed building a short distance to the south of the appeal site. Baldings is a detached two storey house with tile hung upper storey, prominent chimney stack and some exposed timber framing. According to the description on the statutory list, it dates back to the 17th Century or earlier. As such, its significance derives from its age and surviving vernacular detailing. Although its historical association with Baldings Barn and the adjacent open agricultural land has been eroded by modern development, it has clearly distinct aesthetic from the surrounding housing, which reveals its considerably greater age and rural origins. On that basis the rural context around the listed building is a contributory factor in its setting, which is relevant to its heritage significance.
25. The listed building is enclosed by modern housing to the south and west and there are also two modern dwellings to the north: the Pump House and Slugwash Gardens. Consequently, it is no longer contiguous with the landscape of open fields further along Slugwash Lane. However, the Pump House is set well back and only the modest chalet bungalow at Slugwash Gardens sits near the road frontage. The few dwellings on the opposite side of the lane are set further back, on larger and more highly vegetated plots. The distance between the listed building and the countryside is short and its historic rural context can still be appreciated. The rural character of the lane itself contributes positively to the setting of the listed building, as does the diminishing scale of development at the interface with the countryside.
26. The Framework describes the setting of a heritage asset as the surroundings in which it is experienced. It includes features which affect the ability to appreciate the

significance of the heritage asset and, depending on the circumstances, is not limited to land which is immediately adjacent to the heritage asset or directly affects views of it.

27. In this case, although the proposed dwellings would not be visible from Baldings or vice versa, the development would extend the developed frontage along the west side of the lane, further eroding the connection between the listed building and the countryside. While the landscape framework would provide a leafy setting around the dwellings, the site would nevertheless have a significantly more built-up character and there would be a more abrupt transition into the countryside. Formation of a footway would urbanise the lane, eroding its rural character, as described above. Although the close boarded fence at Baldings is also a somewhat urbanising feature, currently there is a hedge and soft verge in front of it and in any case the plans indicate that the footway would be in addition to, not in place of, the fence. Therefore, the footway would have a direct and adverse visual effect on the more immediate setting of the listed building.
28. Given the above, notwithstanding that the rural context around the heritage asset is already somewhat compromised, there would be additional harm to the setting of the heritage asset, which would further compromise the appreciation of its significance as a rural dwelling.
29. The proposed external materials and detailing include elements which are found in rural surroundings, such as timber boarding. They are not particularly characteristic of the existing housing on the edge of the settlement, which is largely of brick and tile. Nor do the two storey elements deploy contrasting materials on the lower and upper floor, as is found on some of the more traditional buildings in the settlement. However, there would be some contrast in the materials used on different building elements, and subject to the selection of an appropriate facing brick, the elevations would be muted, rather than unduly dark or heavy. The design could be viewed as a contemporary reinterpretation of rural building forms. However, that would not adequately mitigate the other adverse effects on the setting of the heritage asset as described above.
30. No harm to heritage assets was alleged when a previous application for 17 dwellings was refused in 2018, or when the current application was initially recommended for approval. The Council acknowledges that officers' position on the proposal changed in response to heritage advice, which was sought at a late stage, after the initial recommendation had been published. Nevertheless, having sought and received that advice, it was not inappropriate for the Council to have regard to its contents as a consideration relevant to the proposal.
31. As far as can be determined from the appeal decision, the Inspector's comments in the Manor Nursery² case draw on the initial officer report, prior to the Council's position changing. There is no indication that he had access to the subsequent heritage advice or had made an independent assessment of the effect of this proposed development on the setting of Baldings. Nor was he obliged to do so, since that was not the proposal before him. Therefore, no clear conclusions can be drawn from the comments in that decision.
32. I am furthermore mindful of my statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the

² Appeal Ref: APP/P1425/W/24/3337649

desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. While the harm in this case relates to the setting of the listed building, rather than any direct effect on the building itself or other designated heritage assets, that is nevertheless a matter to which special regard must be had, in line with that statutory obligation.

33. For the reasons given above, I conclude that the proposed development would neither preserve nor enhance the setting of Baldings, a Grade II listed building. It would conflict with Policy CP11 of LLP1 and Policy DM33 of LLP2. These policies, amongst other things set out requirements for safeguarding historic assets, including that development affecting a heritage asset will only be permitted where the proposal would make a positive contribution to conserving or enhancing the significance of the heritage asset, taking account of factors including its setting.

Heritage Balance: Public Benefits

34. Taking account of the existing relationship between Baldings and its rural context, the harm to the setting and significance of the listed building would be less than substantial. Nevertheless, I have attached considerable importance and weight to the desirability of avoiding such harm, in accordance with the statutory obligation mentioned above.
35. Paragraph 212 of the Framework similarly requires that great weight is given to conservation of designated heritage assets, including where the level of harm to their significance is less than substantial. However, paragraph 215 requires in these circumstances that the harm to the heritage asset should be weighed against any public benefits of the proposal.
36. The development would provide six new dwellings of varied size, in a location where future occupiers could access services and facilities in Wivelsfield Green, without being unduly dependent on travel by car. Occupiers of a few existing dwellings on Slugwash Lane would also benefit from enhanced pedestrian connectivity. There would be some limited short term economic benefit as a result of the construction process and longer term economic benefits from a modest increase in use of local services and facilities.
37. Energy efficiency has been considered in the design of the development, including measures to limit carbon emissions and water consumption. Ecological mitigation and enhancement measures are also proposed, with a view to achieving a biodiversity net gain (BNG). While interested parties have cast doubt on the ecological baseline, referring to clearance of previous vegetation, in any case the extent of BNG would be subject to later confirmation through consideration of a detailed BNG design, and a long term management and maintenance regime³. On that basis, while BNG may be achievable, there is no clear evidence that it would go beyond the requirements of the development plan or other Council guidance. As such, the potential for ecological enhancements attracts limited positive weight.
38. The development would not make use of previously developed land and the Framework's support for more effective use of land is not at the expense of other considerations, including the desirability of maintaining an area's prevailing character and setting, or the effect on heritage assets. While the low density aims to respond to the grain of the surrounding area, nevertheless that means the

³ Arbtech Biodiversity Net Gain File Note, November 2023

number of dwellings proposed is fairly modest. Nevertheless, the proposal would contribute to the delivery of housing on small and medium sized sites.

39. The Council lacks a five year supply of housing, with the supply standing at around 2.6 years based on local housing need as at September 2023, which according to the Council is the most recent available figure. As such, the evidence indicates that there is a substantial shortfall, and the delivery of additional housing is a key benefit of the proposal. Therefore, taking into account the scale of the shortfall, I have given moderate weight to the delivery of six additional homes. I have also given positive consideration to the other public benefits, albeit those are individually of more modest weight.
40. Even when considered collectively, I conclude that the weight attributed to the public benefits falls well short of the considerable importance and weight attached to the harmful effect on the setting of the listed building. Consequently, the public benefits do not outweigh the harm to the significance of the designated heritage asset and the proposed development would conflict with the approach in the Framework to conserving and enhancing heritage assets, notably paragraphs 212 and 215, as summarised above.

Other Considerations

41. The site is identified in the Council's Land Availability Assessment (LAA) as being available for development and potentially suitable, deliverable or developable for approximately 10 dwellings. However, Planning Practice Guidance explains that the purpose of preparing a LAA is to inform plan-making and decision-taking. The LAA does not in itself determine whether a site should be allocated for development and nor does inclusion of a site in a LAA over-ride the consideration of a specific development against the development plan and other material considerations.
42. The appellant has also highlighted that 'potentially developable' or 'developable' sites have been identified in a February 2025 public consultation on the emerging Local Plan. However, that consultation was under Regulation 18⁴, indicating that, as outlined above, preparation of the emerging Local Plan remains at an early stage. While the consultation title refers to 'early site allocation proposals', the supporting evidence brought to my attention appears to be an updated version of the LAA site assessment, rather than a draft site allocation. In any case, the emerging Local Plan carries limited weight and any reference to the site in the evidence base or recent public consultation does not outweigh the conclusions above on the specific development proposal which is before me.
43. The Council did not allege any harm in relation to flood risk, highway safety, living conditions or a range of other matters raised by interested parties subject, in some cases, to those issues being addressed through conditions. However, even if I were to reach a similar view on those matters, that is a neutral consideration which would not weigh in favour of the proposal.

Planning Balance and Conclusion

44. Taking account of the housing land supply shortfall, paragraph 11d of the Framework is applicable. Also in that context, having had regard to the relationship between the site and existing housing within the settlement and the increased

⁴ The Town and Country Planning (Local Planning) (England) Regulations 2012

housing requirement since planning boundaries were established, the conflict with the spatial strategy set out in the development plan carries limited weight for purposes of this appeal. However, the development would also conflict with policies in the development plan relating to the effect on the character and appearance of the area and the effect on designated heritage assets. As applied to this proposal, relevant requirements in those policies broadly reflect the Framework's provisions for achieving well-designed places and conserving and enhancing the historic environment. Consequently, the proposal would conflict with the development plan as a whole and that conflict carries significant weight.

45. For the reasons given above, even when the collective public benefits of the proposal are taken into account, that would not outweigh the harm to the setting of the listed building. Consequently, there is a strong reason for refusing the development based on policies in the Framework that protect areas or assets of particular importance, in this case the designated heritage asset. Therefore, paragraph 11di of the Framework is relevant and the test in paragraph 11dii is not applicable. On that basis, the proposal does not benefit from the presumption in favour of sustainable development, as defined in paragraph 11d.
46. The proposed development would conflict with the development plan and there are no material considerations which indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

Jane Smith

INSPECTOR